CF0000062819

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IN THE HIGH COURT OF JUDICATURE AT : JABALPUR.

CRIMINAL ~~AK~~ APPEAL NO. 1251 /1999.

APPELLANT :- BALSAY, S/o Manrakhan Korva,
IN JAIL aged about 35 years,
R/o Village Khotapani,
P.S.Kunkuri, Distt. Jashpur-Nagar,
(THROUGH LEGAL AID)

-VERSUS-

Rtd. ~~A~~RESPONDENT:- State of M.P.,
through P.S. Kunkari,
Distt. Jashpur Nagar(MP)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CR.P.C.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1251/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

4-12-2006

Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Rakesh Thakur, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 22-3-99 passed by Additional Sessions Judge, Jashpurnagar, in S.T. No.211/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of Suni Bai, sentenced him to undergo imprisonment for life & to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo S.I. for 5 years.

Case of the prosecution, in brief, is that PW-1Gansuram Korwa, son of the deceased, lodged a report Ex.P/1 in Police Station Kurkari to the effect that his father died 2 years back, therefore, his mother Suni Bai started residing with accused Balsai as his wife. Yesterday i.e. on 5-11-98 when he was sleeping at his house at about 5 p.m., his aunt Lali Bai Korwa came to his house and informed him that Balsai has committed murder of your mother Suni Bai by attacking with a Lathi. The body is lying in the house. On hearing this, he along with his aunt Lali Bai Korwa and maternal grandmother Sudhani Bai went to the place and saw that body was lying there. As Kotwar

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A.125.1/95 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
1	was not available yesterday night, therefore, today he has come to lodge the report. Receiving this report, Station House Officer registered the offence under Section 302 of the I.P.C., left for the scene of occurrence and prepared inquest Ex.-P/2 on the body of Suni Bai. During investigation, the accused gave memorandum Ex.-P/3, in pursuance of that, Lathi, weapon of offence, was seized under Ex.-P/4. The body of deceased Suni Bai was sent to Primary Health Centre, Kunkuri for postmortem examination where Dr. S. Toppo (PW-5) conducted postmortem and prepared postmortem report Ex.-P/5. He opined that cause of death is haemorrhagic shock due to traumatic rupture of spleen. The nature of death is homicidal. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn, committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution examined 7 witnesses in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, pleaded innocence. He has also stated that Suni Bai was suffering from disease, she was taking treatment, when she was not completely cured, she came back to his house and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing respective counsel for the parties, convicted and sentenced the accused as aforementioned. We have heard learned counsel for the parties.	

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CC:A:1251/95 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Tiwari, has not disputed homicidal death of Suni Bai. Apart from that, PW-5 Dr. S. Toppo, who conducted postmortem on the body of deceased Suni Bai, has stated that there was a bluish injury below chest in the size of 2½" x 1", below that injury spleen was ruptured in the size of 1½" x 1 cm. x 1 cm. There was injury on occipital region. Another injury was on the stomach in the size of 2" x 1". Suni Bai died on account of haemorrhage and rupture of spleen. His report is Ex.-P/5. Medical evidence is corroborated by the evidence of PW-3 Sukri Bai Korwa, who witnessed the crime in question. Therefore, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-3 Sukri Bai Korwa has stated that Suni Bai was her niece and accused Bal Sai is also known to her. 4 months prior to her evidence in Court at about 4 p.m. she was consuming Handiya (intoxicant), Suni Bai also came to her house to consume Handiya, at that time, the accused came from his agricultural field. As there was some quarrel between Bal Sai and Suni Bai on the previous day on the ground that Suni Bai had not gone to agricultural field, therefore, the accused asked Suni Bai as to why she is not going to the residence. He assaulted with a club twice on her head and once on stomach. She intervened, therefore, the accused left for his house. On account of the injuries sustained by Suni Bai, she succumbed to the injuries. In cross-examination, she has stated that she and Suni Bai, both were consuming Handiya (intoxicant).

Learned counsel for the accused/appellant argued that in the last line of para-3 of her evidence, this witness has stated that after consuming

P.T.O.

(32)

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CA/1251/95 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Handiya (intoxicant) she went for sleep. Therefore, from the above evidence, it can be inferred that this witness had not witnessed the crime in question.

In examination-in-chief, this witness has categorically stated that she witnessed the incident when the accused assaulted the deceased with a club. In cross-examination, even though she has stated that after consumption of Handiya (intoxicant) she went for sleep, but she has not stated that she went for sleep even before the incident and she had not witnessed the incident. Therefore, we do not find any substance in the argument advanced by learned counsel for the accused/appellant. Moreover, evidence of this eyewitness is corroborated by the medical evidence of PW-5 Dr. S. Toppo. Therefore, involvement of the accused/ appellant in the crime in question is established. There is nothing in cross-examination of the evidence of PW-3 to discredit her evidence.

Mr. Tiwari argued that as per the evidence, Suni Bai was suffering from disease. As per the evidence of Dr. Toppo, on account of Malaria spleen can be enlarged, Suni Bai was suffering from fever , therefore, her spleen was enlarged, the accused was not knowing that spleen was enlarged and he assaulted, therefore, the accused cannot be convicted for offence punishable under Section 302 of the IPC.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by respective counsel, we have scrutinized the evidence. It has come in the prosecution evidence that Suni Bai was suffering from fever and on account of disease she was weak. PW-5 Dr. S. Toppo has stated that on account of fever, spleen can be enlarged, even on fall, same can be ruptured. PW-3 Sukri Bai Korwa has

P.T.O.

(33)

(32)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CG.A.1251/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stated that on the fateful day she and the deceased were consuming Handiya (intoxicant), at that time, the accused came and asked the deceased as to why she is not going to the residence. On the previous day, there was quarrel between the accused and the deceased for the reason that the deceased had not gone to the agricultural field, in that process, the accused assaulted the deceased with club that landed on the stomach and spleen of the deceased was ruptured, that proved fatal and she died. In the circumstances, it cannot be said that the accused assaulted the deceased with intention to cause her death. But from the evidence available on record, it can safely be inferred that when the accused assaulted the deceased with club he had a knowledge that by assaulting with club, he may likely to cause her death. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 8 years. It is stated that the accused is in detention since 7-11-98 thereby he has already completed the sentence. It is, therefore, directed that if the accused is not required in any other case, then he be set at liberty forthwith.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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